



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 27, 1998

Mr. W. J. Ham
Staff Attorney
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

OR98-0559

Dear Mr. Ham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112962.

The Texas Youth Commission (the "commission") received a request for two categories of information. You ask whether you may withhold information response to the second type. The requestor has asked for "the first page of all proposed decisions by Ms. Grace, during the fiscal years 1994 to present." You claim that four responsive documents are excepted from disclosure by sections 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue. Because you do not seek a decision about the other requested information, we presume that it has been released to the requestor. Gov't Code § 552.301.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The commission has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210,


212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The commission must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you explain that the commission is currently involved in four separate lawsuits. You have provided the first page of the petitions in those cases. You assert that the requested proposed decisions are the basis of each of the pending suits. You have shown that litigation is pending and that the requested records relate to the pending litigation. You may withhold the four pages under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 112962

Enclosures: Submitted documents

cc: Mr. Karim Shabazz
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(w/o enclosures)